

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION
Case No. 2:10-CV-3-D

CARL B. MARSHBURN, III

Plaintiff,)	
v.)	
)	
M/V DIAMOND CITY (O.N. 291370),)	
her boats, tackle, apparel, furniture,)	DEFAULT JUDGMENT
engines, fishing history and permits,)	
and appurtenances, etc.,)	
<i>in rem,</i>)	
)	
and)	
)	
MARTIN E. MUNS,)	
<i>in personam</i>)	

This matter is before the Court upon application of the Plaintiff, Carl B. Marshburn, III, and after a careful review of the Court file along with the exhibits attached thereto, the Court finds as follows:

1. This action is to foreclose on preferred mortgage liens of first and second preferred ship mortgages on the vessel "DIAMOND CITY" (O.N. 291370), her boats, tackle, apparel, furniture, engines, fishing history and permits, and appurtenances, etc., granted pursuant to the Maritime Commercial Instruments and Liens Act, specifically 46 U.S.C § 31326; Rule E(9)(b) of the Supplemental Rules for Certain Admiralty and Maritime Claims; and further in accordance with Local Admiralty Rule 214.00 of this Court; all as prayed for in the verified Complaint filed herein on 29 January 2010.

2. The owner of the vessel, Martin E. Muns, of Morehead City, North Carolina, was notified by certified mail on 22 February 2010 of the commencement of this foreclosure action and was sent copies of the Warrant Of Arrest, the Complaint, the Motion For Order Appointing Substitute Custodian, and this Court's Order appointing the Substitute Custodian.

3. Proper notice has been given to all potential lien claimants of the vessel "DIAMOND CITY" as required by the Federal Rules of Civil Procedure and the Local Admiralty Rules.

4. Neither the owner nor anyone else has appeared to claim ownership of the above described vessel, "DIAMOND CITY", Official No. 291370, or to answer the Complaint herein or to assert any lien against the vessel.

5. The legal time for pleading or otherwise defending this action having expired, upon Motion of the Plaintiff, default was entered against all persons claiming an interest in the Vessel and against *in personam* defendant Martin E. Muns.

6. Pursuant to Motion by Plaintiff the Court ordered the interlocutory sale of the vessel by the United States Marshal, and pursuant to the Court's order of 18 March 2010, the United States Marshal did sell the vessel on 6 April 2010 to the highest bidder for the sum of \$1000.00. The highest bidder was Carl B. Marshburn, III. The United States Marshal filed on 12 March 2010 his Report of Sale advising that the sale price was not required to be paid into the Marshal's office, the winning bid being lower than the Plaintiff's security interest, and made by the Mortgagee.

7. In accordance with the provisions of Local Admiralty Rule 214.00 (h) this Court entered a Confirmation of Sale without Motion on 27 April 2010 confirming the sale of the Vessel.

8. The United States Marshal, in compliance with the Order Of Confirmation entered by the Court, has properly delivered possession of the Defendant vessel to buyer, Carl B. Marshburn, III, and has executed and delivered to the said buyer a Bill of Sale for the vessel free and clear of all liens.

9. The United States Marshal has submitted and made a part of the record his Bill for Costs incurred in the matter in the total amount of \$3243.00.

10. Plaintiff incurred a filing fee for bringing this action of \$350.00.

WHEREFORE, by virtue of the law and by reason of the premises herein:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff have and recover:

- 1) judgment against Defendant Martin E. Muns in the amount of \$271, 187.00 ~~plus prejudgment~~
~~at the rate of _____~~ and post judgment interest at the rate of .23%; and
- 2) costs in the amount of \$3593.00
- 3)

Dated 5 day of November, 2010.

James Dever
UNITED STATES DISTRICT COURT JUDGE